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FISCAL IMPACT STATEMENT

LS 7749

BILL NUMBER: HB 1685

NOTE PREPARED: Jan 6, 2005

BILL AMENDED:

SUBJECT: Methamphetamine.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires a law enforcement agency to report the existence of a methamphetamine laboratory to the: (1) State Police; (2) fire department; (3) county health department; and, if there is a child less than 14 years of age at the methamphetamine laboratory, to notify the Division of Family and Children. It provides that the State Police shall adopt guidelines concerning the report of a methamphetamine laboratory.

The bill grants an income tax credit to a person who uses a chemical additive or locking device to make the use or theft of anhydrous ammonia for the manufacture of methamphetamine more difficult. It permits ephedrine and pseudoephedrine to be dispensed only at a pharmacy by a licensed pharmacist or certified pharmacy technician and in a package that contains not more than 12 capsules. It also requires a person who purchases ephedrine or pseudoephedrine to present photo identification and sign a receipt or record book.

The bill makes unlawful dispensing of ephedrine or pseudoephedrine a Class A misdemeanor. It allows a nonresident pharmacy to sell a drug containing ephedrine or pseudoephedrine to a resident by mail order if the nonresident pharmacy is registered with the board of pharmacy and meets certain requirements. It makes the sale of a drug containing ephedrine or pseudoephedrine by mail order a Class D felony if the seller is not a registered nonresident pharmacy.

The bill exempts ephedrine or pseudoephedrine in liquid form or prescribed from the dispensing, possession, and mail order sale restrictions. It permits a court to require a defendant demonstrating a pattern of repeated illegal use or manufacture of a controlled substance to participate in a drug treatment program as a condition of bail. The bill also makes other changes.

Effective Date: July 1, 2005.

Explanation of State Expenditures: *Methamphetamine Lab Reporting:* The bill requires the State Police Department to develop either a reporting form, a specified electronic format, or both, by which law enforcement agencies can report the location of a methamphetamine lab. This provision should have a minimal fiscal impact on the Department, however, it may be dependent on the guidelines set by the Department for administering the reporting requirement.

Department of State Revenue (DOR): The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate this deduction. These expenses presumably could be absorbed given the DOR's existing budget and resources.

Commercial Additives List: This provision requires the Office of the State Chemist to publish a list of commercial additives that affect ammonia in ways specified by the bill. It also requires the State Chemist to adopt rules regarding the publishing of the list. Although this provision could result in an increase of administrative burden on the Office of the State Chemist, it will not have an impact on state funds as the Office of the State Chemist is a self-supporting agency from fees provided in statute.

Penalty Provision: This bill makes it a Class D felony for unlawfully dispensing certain forms of ephedrine or pseudoephedrine and for possessing more than nine grams of ephedrine or pseudoephedrine. It also makes it a Class D felony for anyone to sell certain forms of ephedrine or pseudoephedrine by mail order in Indiana without having an Indiana nonresident pharmacy license. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$21,514 in FY 2004, ranging from a low of \$16,645 to a high of \$49,281. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$59,574, with the costs ranging from a low of \$52,420 to a high of \$77,674. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Ammonia Security Credit:* The bill could potentially reduce revenue from the Adjusted Gross Income (AGI) Tax. It is estimated that credits claimed for the purchase of anhydrous ammonia treated to prevent theft or use in methamphetamine production could potentially total about \$2.3 M annually beginning with tax year 2006. The amount of credits that could potentially be claimed for the purchase of ammonia locking devices is indeterminable. However, the annual fiscal impact from these credits would depend on taxpayers having sufficient tax liabilities to exhaust the credits. The fiscal impact of the credit is expected to begin in FY 2007; or FY 2006 if taxpayers adjust their quarterly estimated payments.

The bill establishes two nonrefundable AGI Tax credits for individual and corporate taxpayers. The first credit may be claimed by taxpayers who purchase anhydrous ammonia that contains an additive determined by the State Chemist to do any of the following:

- (1) render it unusable to produce methamphetamine;
- (2) significantly interfere with its use in producing methamphetamine;
- (3) make the theft of the chemical more difficult by staining, dyeing, or otherwise identifying the ammonia, the equipment or container used in the theft of the ammonia, or the person committing the theft.

This credit is equal to \$9 per ton of the treated anhydrous ammonia purchased by the taxpayer. The second credit may be claimed by taxpayers for the purchase of ammonia locking devices. The credit is equal to the lesser of the cost of one or more locking devices or \$100. Both tax credits may be claimed against the taxpayer's AGI tax liability. Any unused credits may be carried forward by a taxpayer. However, a taxpayer is not entitled to a carryback or refund of unused credits. For pass through entities, the credits may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity.

The credits are effective beginning in tax year 2006. Revenue from the AGI Tax on corporations is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund.

Anhydrous ammonia is used as a fertilizer. On average, about 250,000 tons of anhydrous ammonia is purchased and used in Indiana. The State Chemist reports that an additive called *GloTell* can be used to treat anhydrous ammonia. When *GloTell*-treated anhydrous ammonia is released into the atmosphere, most objects that come in contact with it are stained a fluorescent pink color. According to the State Chemist, the additive costs about \$9 per ton. Thus, the tax credit would offset this additional cost to the user.

Nonresident Pharmacy License: Because this bill makes it illegal for anyone to sell certain forms of ephedrine or pseudoephedrine by mail order in Indiana without having an Indiana nonresident pharmacy license, additional nonresident pharmacy licenses could potentially be applied for. The Indiana Board of Pharmacy charges \$100 for an out-of-state pharmacy license. The Health Professions Bureau reported there were four active out-of-state pharmacy licenses, as of October 2004.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Penalty Provision:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies, Department of State Revenue, Office of the Indiana State Chemist, State Police.

Information Sources: Indiana Sheriffs' Association, Department of Correction. Alan R. Hanks, State Chemist, (765) 494-1492.

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